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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 MASS, 3/F

425 I Street N.W.

Washington, D.C. 20536



File: WAC 00 131 53218 Office: CALIFORNIA SERVICE CENTER

Date: SEP 12 2003

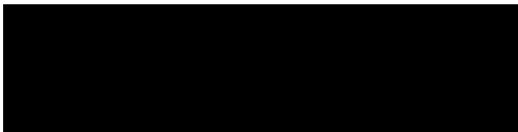
IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

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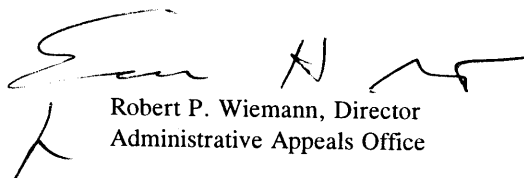
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center initially denied the petition due to abandonment and subsequently reopened the case to allow the petitioner to submit additional evidence. The petition was denied by the Acting Director of the California Service Center and was subsequently appealed to the Administrative Appeals Office (AAO). The AAO denied the appeal. The petitioner has filed a motion to reopen and reconsider. The motion will be granted and the prior decisions of the acting director and the AAO will be affirmed.

The petitioner is seeking classification as a special immigrant minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4) as a special immigrant religious worker. The petitioner founded his church in 2000.

The acting director denied the petition, finding that the petitioner failed to establish that he had been continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition. The acting director further denied the petition, finding that he had failed to establish that he had the ability to pay the proffered wage or that he had made a qualifying job offer.

On motion, the petitioner submits a statement and additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in

section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner is a member and a priest of the Eastern Orthodox Church. According to the evidence on the record, he was ordained in Romania in September 1986, and he is a 38-year old native and citizen of Romania who entered the United States as a R-1 nonimmigrant religious worker on May 6, 1999.

The first issue to be addressed in this proceeding is whether the petitioner has established that a qualifying job offer has been tendered.

8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The acting director determined that there is no religious organization requesting employment; therefore, there is no job offer.

In review, the petitioner submitted a letter from the Right Reverend Lorenzo Casati, Bishop of Palermo, stating that the Bishop authorized the petitioner to open a mission parish and serve as Pastor of the Saint Elias Orthodox Church in Orange County, California. The petitioner also submitted a declaration from the treasurer of the Saint Elias Orthodox Church, stating that it employs the beneficiary as its minister, paying him a \$600 monthly salary plus a \$400 allowance for housing, free groceries and a vehicle for transportation.

In review, the petitioner has established that there is a qualified job offer.

The next issue to be addressed in this proceeding is whether the petitioner had been continuously carrying on the religious vocation of minister (priest) for the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m) (1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. *Matter of Faith Assembly Church*, 19 I&N 391 (Comm. 1986).

The petition was filed on March 30, 2000. Therefore, the petitioner must establish that he had been continuously and solely carrying on the vocation of a minister of religion since at least March 30, 1998.

Counsel for the petitioner stated that he had been employed as a priest at the Birda Church in Romania from 1990 until March 1999. According to a letter submitted by the petitioner, he was employed at the Birda Church from 1990 until November 23, 1998. According to another letter submitted by the petitioner, he was employed at the Birda Church from November 1998 until March 1999. The evidence submitted is contradictory as to when the beneficiary began and stopped working at the Birda Church. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner submitted a letter stating that he assisted another priest in Palermo, Italy, from March 1999 to May 1999. The letter's author stated that the petitioner was given free room and board plus travel expenses.

The evidence on the record states that he performed ministerial services at the Saint Anthony the Great Monastery in Cleveland, Ohio, in the period from May 1999 to August 1999.

The evidence on the record indicates that in August 1999, the petitioner went to Orange County, California, to establish and minister the Saint Ilie Romanian Orthodox Church. A letter from the Reverend David Baumann states that the petitioner has been connected with the Episcopal Church of the Blessed Sacrament since September 1999. The petitioner stated that for the "last year period, [he] had three Baptisms, one wedding and one burial."

The director found that evidence insufficient to establish that the petitioner had been performing the ministry vocation continuously for at least the two-year period immediately preceding the filing of the petition. The AAO concurs. The petitioner's own statement suggests that he had been performing services on a part-time intermittent basis. Some of the evidence is contradictory. The evidence indicates that the petitioner's church was not founded until February 2000 and incorporated in December 2000. The petitioner failed to overcome the director's objection to approving the petition.

A petitioner also must demonstrate its ability to pay the proffered wage.

8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

In support of the assertion that the ability exists to pay the proffered wage, counsel for the petitioner submitted a bank letter and statement for the church, canceled checks from the church's account to the petitioner, a declaration from the church's treasurer, and an Internal Revenue Service letter indicating that the church was granted tax-exempt status as a religious organization.

In the decision dated November 6, 2001, the acting director determined that the evidence was insufficient to establish ability to pay. The acting director further noted that the checks were not canceled checks. On motion, counsel for the petitioner submitted proof that the checks were canceled checks.

In review, the evidence is insufficient to establish the ability to pay the proffered wage. The pertinent regulation requires evidence in the form of annual reports, federal tax returns, or audited financial statements. The petitioner failed to provide evidence in such a form. The petitioner has not overcome this objection to granting the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.